

AG Contract No.: KR05-0463TRN
ADOT ECS File No.: JPA 04-061
Section: Cactus 25th - 30th Avenue
both sides of I-17
TRACS No.: H 6440 01C, 01D, 01R
Budget Source Item No: 19804
City of Phoenix No.: 116684

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF PHOENIX

THIS AGREEMENT is entered into on this date of July 28, 2005,
pursuant to Arizona Revised Statutes, § 11-951 through 11-954, as amended, between the State of
Arizona, acting by and through its Department of Transportation (the "State"), and the City of Phoenix,
acting by and through its City Manager (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this agreement, and
has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by City Charter Chapter II, Section 2.i. to enter into this agreement, and
has by Resolution or City Ordinance, a copy of which is attached hereto and made a part hereof, resolved
to enter into this agreement, and has authorized the undersigned to execute this agreement on behalf of
the City.

3. Incident to ongoing improvements to Interstate Highway 17 ("I-17") in the area of the Cactus Road
traffic interchange, the State has agreed, at the request of the City, to design and construct various
roadway improvements at an estimated cost of \$330,000.00; such roadway improvements to be
constructed along Cactus Road on both sides of the I-17, generally between 25th and 30th avenues,
hereinafter referred to as the "Project." The City will provide the funding for the requested improvements
and shall be responsible for the roadway maintenance at the locations indicated above. The State will
accomplish the acquisition of necessary rights-of-way for construction of the Project. The purpose of this
agreement is to define each party's responsibilities associated with the Project.

4. The State's construction for the Project will include, at no cost to the City, the relocation of City
utilities for which prior rights have been documented. Further, the City has relocated certain prior-rights
utilities in advance of the Project. The costs incurred by the City for the advance relocation of such utilities
shall be considered a cost of the Project. At no time shall the State be considered the owner, operator, or
locator for the City's utilities.

NO. 27652
Filed with the Secretary of State
Date Filed: 7/28/05
Janice K. Brewer
Secretary of State
By: [Signature]

5. The parties hereto agree to and acknowledge the following conditions: a) the estimated monetary amounts referenced in this agreement are subject to change and could change substantially before completion of the Project; b) the parties shall perform their responsibilities consistent with this agreement; and c) any change or modification to the Project will only occur with the mutual written consent of the parties.

THEREFORE, in consideration of the mutual agreements expressed herein, it is further agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this agreement, and no earlier than July 1, 2005, invoice the City for the estimated amount of \$330,000 00 for the associated costs of the Project, as follows:

- i \$220,000 00 for construction costs, Tracs No. H6440 01C
- ii \$ 50,000 00 for right-of-way costs, Tracs No. H6440 01R
- iii \$ 60,000 00 for design costs, Tracs No. H6440 01D

b. Prepare and provide design plans, specifications and other such documents and services required for construction bidding and construction, and submit same to the City for concurrence

c. Advertise for bids and award one or more construction contract(s) for the Project, administer same and make all payments to the contractor(s), and be responsible for contractor claims for additional compensation caused by Project delays attributable to the State

d. Prior to award of the construction contract for the Project, and the approval of same by resolution of the State's Transportation Board, acquire the necessary rights-of-way for Project

e. Coordinate with the City the review and clearance of the utility work and other roadway matters related to the Project

f. Reimburse the monetary difference to City should actual costs of the Project be less than the invoiced estimated amount paid by the City

g. Upon completion of the Project, abandon to the City jurisdiction, ownership, and maintenance responsibilities of the rights-of way depicted on Exhibit "A" attached hereto.

2. The City will.

a. Review the design documents required for construction of the Project, and provide comments to the State as appropriate

b. Be responsible for any and all costs of the road improvement and betterments requested by the City, currently estimated at \$330,000.00. In the event unforeseen conditions or circumstances increase the cost of said work necessitated by a change in the Project's scope of work, such additional costs shall require prior approval of the State. All costs attributable to any engineering change orders requested by the City shall be the sole responsibility of the City.

c. Upon execution of this agreement by the City, grant the State, without charge or cost or the necessity of additional documents or agreements, permission to enter upon the lands of the City as required to conduct any and all construction and pre-construction related activities attendant to the Project, including, without limitation, temporary construction easements or temporary rights-of-entry to accomplish, among other things, soil and foundation investigations.

d. Coordinate with the State, the review and clearance of the utility work and other roadway items related to the Project.

e. Upon execution of this agreement, and completion of the Project by the State, waive the requirements of Arizona Revised Statutes § 28-7209 and accept ownership, jurisdiction, and maintenance responsibilities of the rights-of-way depicted Exhibit "A." Further the City shall be responsible for all future aesthetic maintenance, e.g., graffiti removal, on the City's side of any noise-barrier walls associated with the Project, whether such walls were existing and be responsible for the roadway maintenance associated with the Project.

f. Reimburse the State for its actual costs to acquire any and all additional rights-of-way needed for the Project, whether through voluntary sale or eminent domain (condemnation) proceedings, including, without limitation, customary real estate closing costs, or the costs incurred by the State to prosecute any such condemnation cases to final judgment.

g. Remit payment to the State in the amount of \$330,000.00 upon receipt of an invoice from the State for the design and construction of the Project.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this agreement shall remain in full force and effect until completion and reimbursements provided herein. However, the City will provide maintenance responsibilities along Cactus road on both sides of the I-17 generally between 25th and 30th avenues. This agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty-day (30) written notice to either party. The State shall in no way be obligated to maintain said Project should either City fail to budget or provide for proper maintenance as set forth in this agreement.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

4. The provisions of Arizona Revised Statutes § 35-214 are applicable to this agreement, and both the City and State shall be afforded the rights, interests and privileges as provided therein; provided however, that should the City make a reasonable request to inspect the records of the State relating to this Project, such records will be produced at a time and location convenient to both parties.

5. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. This agreement is also subject to the provisions of Arizona Revised Statutes § 41-1463 and Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference, regarding "Non-Discrimination."

6. Non-Availability of Funds: Every payment obligation of the State and City under this agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this agreement, this agreement may be terminated by the State or the City as applicable at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised, and the State and City shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

7. In the event of any controversy, that may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518 as applicable.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, MD 616E
Phoenix, AZ 85007
FAX: (602) 712-7424


City of Phoenix, C/o Ray Dovalina
Street Transportation Director
200 W. Washington - 5th floor
Phoenix, AZ 85003-1611

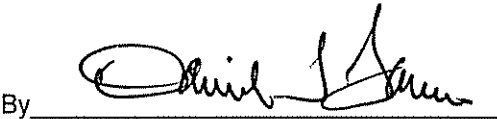
9. Pursuant to Arizona Revised Statutes §11-952 (D), and attached hereto and incorporated herein, is the written determination letter of each party's legal counsel that the parties are authorized under the laws of this State to enter into this agreement and the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.


CITY OF PHOENIX, an Arizona Municipal
Corporation, Frank Fairbanks, City Manager

STATE OF ARIZONA
Department of Transportation

By 
ROSS D. BLAKLEY, Jr., P.E.
Acting Street Transportation Director

By 
DANIEL S. LANCE, P.E.
Deputy State Engineer, Valley Transportation

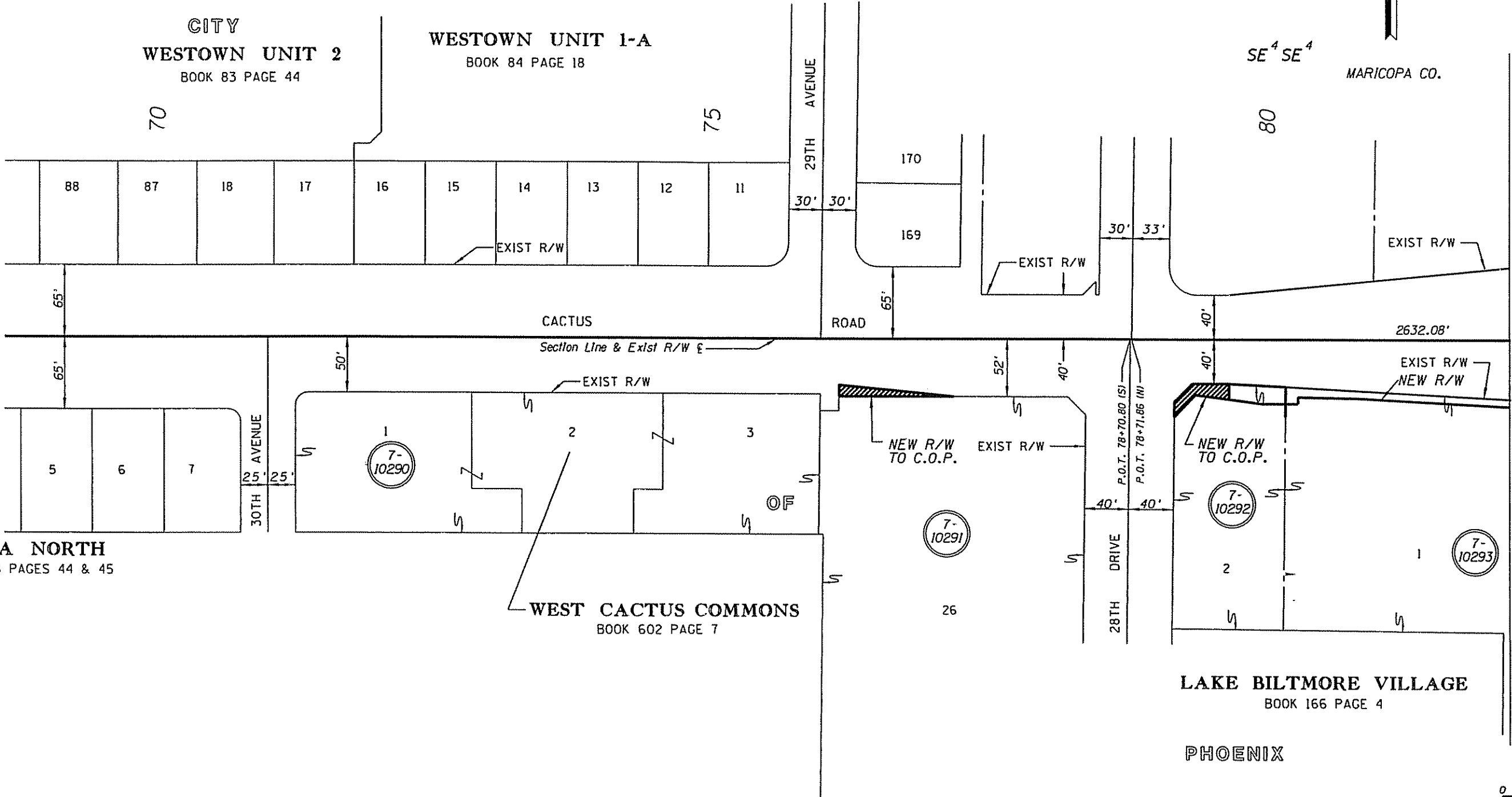
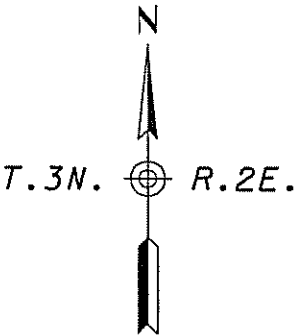
ATTEST

By 
VICKY MIEL
City Clerk



CITY CLERK DEPT.
2005 JUN 11 AM 11:44

EXHIBIT A



SHEET P-2

MATCH LINE

VISTA NORTH
BOOK 118 PAGES 44 & 45

WEST CACTUS COMMONS
BOOK 602 PAGE 7

LAKE BILTMORE VILLAGE
BOOK 166 PAGE 4

PHOENIX

0 25 50
Scale
--V1-17r210.p01.dgn

DRAWING NO.	D-7-T-958	ARIZONA DEPARTMENT OF TRANSPORTATION INTERMODAL TRANSPORTATION DIVISION RIGHT OF WAY PLANS SECTION		
SURVEY	See attached survey	HIGHWAY NAME:	PHOENIX- CORDES JCT	PRELIMINARY NOT FOR CONSTRUCTION OR RECORDING --Created-- 05/18/05 02:35:49 PM SHEET EXHIBIT "A"
DRAWN/DATE	J Hunter 4/05	FEDERAL IDENTIFICATION NO.:	I 017-A-803	
ADOT REVIEW	D. CASDORPH	TRACS NO.	017 MA 210 H6440 OIR	
ROUTE NO.:	I-17	SECTION NAME:	Cactus Road TI	

ATTORNEY APPROVAL FORM

FOR THE CITY OF PHOENIX

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the City of Phoenix, an agreement among public agencies, which, has been reviewed pursuant to A R S section 11-951 through 11-954, and declares this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 7 day of July, 2005.

Approved as to form
Jane W. Sears
Attorney ACTING City Attorney
MB

ORDINANCE NO. S-32112

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA THROUGH THE ARIZONA DEPARTMENT OF TRANSPORTATION TO DESIGN AND CONSTRUCT IMPROVEMENTS TO THE CACTUS ROAD INTERCHANGE AT INTERSTATE 17; AND FURTHER AUTHORIZING THE CITY CONTROLLER TO DISBURSE FUNDS FOR PURPOSES OF THIS ORDINANCE.

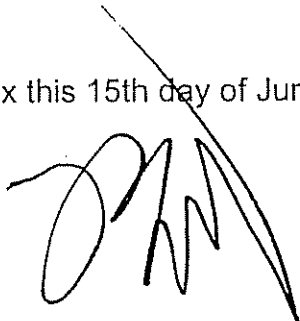
BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as

follows:


SECTION 1. The City Manager is authorized to enter into an intergovernmental agreement with the State of Arizona through the Arizona Department of Transportation to design and construct improvements to the Cactus Road interchange at Interstate 17.


SECTION 2. The City Controller is authorized to disburse funds in the amount of THREE HUNDRED THIRTY THOUSAND DOLLARS (\$330,000.00) for purposes of this Ordinance.

PASSED by the Council of the City of Phoenix this 15th day of June, 2005.


MAYOR

ATTEST:


City Clerk


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APPROVED AS TO FORM:

William Beck Acting City Attorney
MB

REVIEWED BY:
Frank Fairbank City Manager

DLB:tml/CM 17/6-15-05/181299v1



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TRANSPORTATION SECTION
WRITER'S DIRECT NO: 602.542.8837

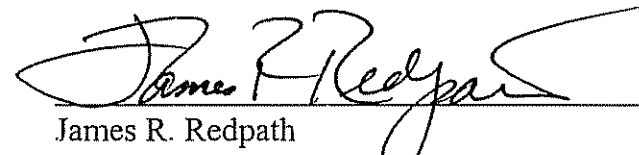
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-0463-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 21 July 2005

Terry Goddard
ATTORNEY GENERAL


James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:780214